

J. SIDNEY ROOD

IBLA 75-331

Decided June 4, 1975

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting application for cash payment in satisfaction of soldiers' additional homestead claims.

Affirmed

1. Applications and Entries: Filing -- Soldiers' Additional Homesteads:  
Generally

Since the statute authorizing cash payment to the holder of soldiers' additional rights requires that an applicant for such payment must give written notice to the Secretary of the Interior of his election to receive such payment prior to January 1, 1975, an application received on January 2, 1975, must be rejected.

APPEARANCES: J. Sidney Rood, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

J. Sidney Rood has appealed to the Secretary of the Interior from a decision of the Eastern States Office, Bureau of Land Management, dated January 16, 1975, which rejected his application for cash payment in satisfaction of his soldiers' additional homestead rights, 43 U.S.C. § 274 (1970).

The Act of August 31, 1964, 78 Stat. 751; 43 U.S.C.A. (1975 Supp.) § 274 n., authorizes a holder of soldiers' additional homestead rights, who has properly recorded his claim pursuant to the Act of August 5, 1955, 69 Stat 534, to elect to receive cash instead of public land in satisfaction of his claim if he gives the Secretary of the Interior written notice of his election prior to January 1, 1970. 1/

Rood recorded his right for 2 acres in February 1956. By letter dated December 30, 1974, Rood gave notice of his election to receive a cash payment. The letter was received at the Interior Department Secretary's mail center on January 2, 1975. The Eastern States Office rejected the notice as filed late. 2/

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1/ Section 6 of the statute reads in pertinent part:

Prior to January 1, 1970, or in the case of soldiers' additional homestead claims, January 1, 1975, any person who has a claim recorded pursuant to the Act of August 5, 1955, by written notice to the Secretary of the Interior, or any officer of the Department of the Interior to whom authority to receive such notice may be delegated, may elect to receive cash instead of public land in satisfaction of his claim, at a rate per acre equal to the average value of the lands offered by the Secretary under section 4 of this Act. Upon a determination that the claim is valid, the Secretary or his delegate shall certify the claim to the Secretary of the Treasury who is authorized and directed to pay the claim out of any money in the Treasury not otherwise appropriated. Acceptance of the money shall constitute a full and complete satisfaction of the claim or holding for which the money is paid \* \* \*.

The pertinent regulation, 43 CFR 2612.4, provides:

(a) Any time up to and including December 31, 1974, a claimant may elect, by written notice to the Director, Bureau of Land Management, to receive cash instead of land in satisfaction of soldiers's additional homestead claims.

(b) Payments will be made at a rate equal to the value per acre of the lands offered under section 4 of the Act of August 31, 1964, for claims of the type being satisfied.

Cash payment for soldiers additional homestead claim is made at the rate of \$250.00 per acre. 43 CFR 2612.1(e)(1).

2/ To be filed a document must be delivered to and received by the proper office. Depositing a document in the mail does not constitute filing, 43 CFR 1521.1-2(f).

Since the notice was received after the time prescribed by statute, the right to make an election had expired. Accordingly, Rood's application had to be rejected. Cf. Susie Ondola, 17 IBLA 359 (1974); Margaret S. Decker, 14 IBLA 215 (1974).

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1 the decision of the Eastern States Office is affirmed.

Martin Ritvo  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

